IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE
WRIT PETITION NO.10647 OF 2004

Shri Satish Anandrao Hegade ..Petitioner
Versus
Shri Manohar Govindrao Jadhav & Anr. ..Respondents

Mr.R.S.Alange for petitioner
Mr.G.S.Godbole for respondents

CORAM : P.V.KAKADE, J.

DATE : 1ST FEBRUARY, 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. This petition is filed against the order passed by Civil Judge, Junior Division, Akkalkot, who by order dated 1.12.2004 rejected the objection raised by the petitioner/judgment debtor and directed that the execution proceeding be proceeded further.

3. The respondent-plaintiff had filed the suit for eviction of the petitioner from the suit premises on various grounds including bonafide requirements and

alleged nuisance committed by the petitioner-tenant in the suit premises. The suit was contested at the initial stage, however, subsequently it came to be compromised by virtue of Compromise Terms at Exh.45 in the said suit, whereby it was agreed between the parties that the possession of the suit premises would be given by the petitioner on 31.12.2003. The details regarding payment of rent and deposit were also workedout in the said Compromise.

. In the meantime original decree holder in Regular Suit No.118 of 1993 Manohar Govind Jadhav sold the suit property to the present respondent no.2, which is a Charitable Trust in the year 2002. When the decree was sought to be executed in Regular Darkhast No.3 of 2004, the petitioner original defendant took exception to execution of the decree raising objection on the ground that due to selling of the property the original decree holder had no right or concerned in respect of the suit property involved in the Darkhast and therefore, was rendered unexecutable. This was canvased mainly on the ground that the suit itself was filed on the ground of bonafide requirement for personal use and occupation of the original plaintiff. The objection application Exh.12

was filed which was adjudicated by the trial judge after hearing both the parties and finally came to be rejected. Hence the present petition.

4. At the outset, it may be noted that the learned counsel for the petitioner initially canvased that the decree cannot be executed, as it was nontransferable and therefore, the respondent no.2 Trust has no right to execute the decree on the basis of Compromise effected between the original landlord and himself. This argument holds no merits, obviously due to the reason that the decree can be sold and the original plaintiff had every right to sale the property and once that was done it is needless to mention that the present respondent no.2 step in the shoes of the original landlord who could execute the decree under the law.

5. It was sought to be held that since the suit was under the provisions of Section 13(1)(g) of the Bombay Rents, Hotel and Lodging House Rates Act i.e. for bonafide requirement and personal use and occupation of the landlord, the stranger who is step in the shoes of the original plaintiff cannot execute the decree. Firstly, it must be noted that the suit was not only on the ground of

Section 13(1)(g) of the Act but also for alleged nuisance committed by the petitioner in the suit premises giving independent cause of action for decree of eviction. It is established legal position that once the suit is compromised, all the contentions and allegations raised between the parties had merged in the said Compromise Decree and there is no reason to go behind the terms and conditions of the Compromise Decree. The learned counsel for the petitioner sought to put reliance on the ruling of the learned Single Judge of this Court in the case of **Krishna Kashinath Patil vs. S. Mohandas Kamath reported in 2002 (2) Mh. L.J. 924**, however, perusal of the ratio laid down therein, it is clear that the issue involved in the said ruling was in respect of terms and conditions of the Compromise and therefore, it cannot be said to be applicable to the present dispute. Reliance is also sought to put on the Apex Court judgment in the case of **Smt. Kaushalya Devi and Ors. vs. K.L.Bansal reported in AIR 1970 SC 838**, wherein it was held that a suit under Delhi and Ajmer Rent Control Act for ejectment of the defendant the parties entered into a compromise that the decree for ejectment be passed against the defendant, executable after certain date, and that a new standard rent at a certain amount be fixed to be payable from a

certain date and the Court recorded the order accordingly. Under such circumstances, it was held that the decree passed on the basis of an award was in contravention of Section 13(1) of the Act because the Court had passed the decree in terms of the award without satisfying itself, the ground of eviction existed. However, in my considered view, this ruling also not applicable to the present set of facts, especially when the suit which was ultimately compromised was not only for bonafide requirement but also the eviction was sought for on other grounds. At any rate the Apex Court ruling is not applicable to the present set of facts.

6. Having considered the reasoning adopted by the trial judge while rejecting the application I do not see any infirmity and perversity in the said reasoning and therefore, it would brook no interference on any fictitious grounds sought to be raised on behalf of the petitioner/judgment debtor, which is clearly an attempt to delay the execution proceeding.

7. In the result the petition stands dismissed with no order as to costs.

8. At this stage the learned counsel for the petitioner prays for Stay of this order. Plea is rejected.